AN ORDINANCE **2006-03-16-0339**

AUTHORIZING EXECUTION OF A CONTRACT WITH FIRST WATCH SOLUTIONS, INC. TO PROVIDE THE FIRE DEPARTMENT WITH BIO-SURVEILLANCE SOFTWARE AND MAINTENANCE FOR A TOTAL COST OF $78,621.00, FROM 2004 METROPOLITAN MEDICAL RESPONSE SYSTEM GRANT FUNDS.

* * * * *

WHEREAS, an offer was submitted by First Watch Solutions, Inc., a sole source supplier, to provide the City of San Antonio Fire Department with bio-surveillance software licenses and maintenance; and

WHEREAS, this software has the capability to monitor real-time emerging biological or natural disease threats, using data obtained from emergency medical units; and

WHEREAS, the total cost of this contract is $78,621.00; **NOW THEREFORE:**

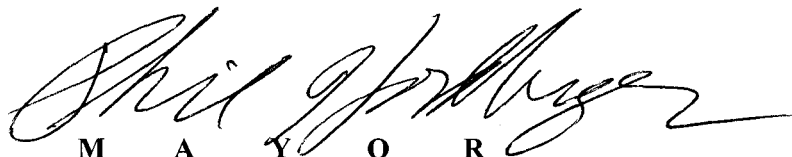**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

SECTION 1. The City Manager, her designee, the Director of Purchasing and General Services, and the City's Fire Chief, are hereby authorized to execute a contract with First Watch Solutions, Inc. to provide the Fire Department with bio-surveillance software and maintenance at a cost of $78,621.00. A copy of the contract is attached hereto and incorporated herein as Exhibit "A", the terms of which are hereby approved.

SECTION 2. Fund 26065000 and Internal Order No. 120000000016, entitled "2004-05 Metro Medical Response System" are hereby designated for use in accounting for the fiscal transactions of this program.

SECTION 3. The sum of $78,621.00 is hereby appropriated in the above designated fund and payments in the amount o$78,621.00 are hereby authorized to be paid to First Watch Solutions, Inc. from the Fund and Internal Order designated above.
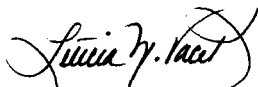
SECTION 4. This ordinance shall take effect March 26, 2006.

PASSED AND APPROVED this 16th day of March, 2006.

M A Y O R

PHIL HARDBERGER

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF SAN ANTONIO
BID TABULATION

<u>BIO-SURVEILLANCE AND DATA MONITORING SOFTWARE</u>

<u>MLWN</u>
FIRST WATCH SOLUTIONS, INC.
937 S. COAST HIGHWAY 101
SUITE C-201
ENCINITAS, CA 92024

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>UNIT EACH</u>	<u>PRICE TOTAL</u>
1	FirstWatch® Thin Client Software License	1	$34,120.00	$34,120.00
2	Annual Maintenance Fee (Year 1)	1	$6,142.00	$6,142.00
3	Installation of FirstWatch® system	1	$1,500.00	$1,500.00
4	Integration of FirstWatch® w/SAFD CAD	1	$4,000.00	$4,000.00
5	Triggers	10	$233.50	$2,335.00
6	Triggers (Year 2)	10	$233.50	$2,335.00
7	Triggers (Year 3)	10	$233.50	$2,335.00
8	Integration w/ZDS EMS Pro	1	$11,500.00	$11,500.00
9	Annual Maintenance for ZDS EMS Pro Interface	1	$2,070.00	$2,070.00
10	Annual Maintenance for SAFD system (Years 2 & 3)	2	$6,142.00	$12,284.00

TOTAL   **$78,621.00**

TERMS   NET 30

06-070/AW

EXHIBIT A

FIRSTWATCH SOLUTIONS, INC. SOFTWARE LICENSE AGREEMENT

1. *Parties; Effective Date.* This Software License Agreement ("Agreement") is between FirstWatch Solutions, Inc., 937 S. Coast Hwy., 101 Suite C-201, Encinitas, California 92024 ("FirstWatch") and the undersigned software user ("Client"). This Agreement is effective on the date last signed ("Effective Date").

2. *Purpose of Agreement.* FirstWatch is a provider of data monitoring and biosurveillance software and related services to organizations and agencies in the fields of public health and public safety. Client desires a license to use the FirstWatch software identified on Schedule A ("Software") according to the terms of this Agreement.

3. *Grant of License.* FirstWatch grants Client a license to load and execute the Software on a computer located at the Site identified on Schedule A for use by its employees and staff in connection with its syndromic surveillance system. Client may make backup and archival copies of the Software.

4. *License Term; Maintenance Services.* The term of the Software license is perpetual. However, Client shall be entitled to Software updates, upgrades, enhancements, new versions, bug fixes, other improvements to the Software and access to the FirstWatch Subscriber Site, and to technical assistance relating to the Software, for (1) the term(s) described in Schedule A of this Software License Agreement and (2) with payment in full for the maintenance portion of the agreement. The term of Software Maintenance and Support commences 90 days after acceptance, which coincides with the expiration of the warranty period described in Section 10.

4. a. Technical Assistance: If Client elects the maintenance portion of this agreement as described in Section 4 above, Client shall be entitled to the following Technical Assistance:

FirstWatch will use reasonable effort to: (a) respond by telephone to any report of an urgent technical problem within 30 minutes after receipt of such report or (b) commence diligent efforts to correct any problem within 30 minutes after detection. FirstWatch will provide methods for client to report urgent technical problems 24x7x365. Non-urgent matters and general questions should be addressed first to the client's local FirstWatch administrator, and then secondarily to a member of the FirstWatch Team. FirstWatch will use reasonable efforts to respond to non-urgent matters in one (1) business day.

FirstWatch supports client sites remotely through a mutually acceptable remote access solution. FirstWatch will use reasonable efforts to commence providing support within one (1) hours after FirstWatch's receipt of a report or detection of a critical problem. FirstWatch may provide a problem correction by means of a "temporary fix" consisting of sufficient programming and operating instructions to implement such problem correction, and FirstWatch will include such problem correction or an equivalent in all subsequent Updates of the Licensed Software. If FirstWatch determines in its sole discretion that it is unable to correct a problem by remote means, FirstWatch will provide on-Site support

5. *FirstWatch Intellectual Property Rights.* The license is nontransferable and nonassignable without the prior, written permission of FirstWatch. Client may not modify, enhance, or create derivative works, decompile, disassemble, or reverse engineer the Software, or make copies other than as authorized in Section 3. All rights not licensed are reserved to FirstWatch and no rights may be implied. FirstWatch retains all intellectual property rights in the Software, and Client agrees to implement software protection measures designed to prevent unauthorized use and copying of the Software.

6. *Delivery, Installation, and Testing.* Client is responsible for acquiring all hardware, equipment, and other software; for preparing the site (including physical and electrical requirements); for properly configuring the computing environment on which the Software will reside, and for installing the Software in accordance with Schedule A and any other requirements provided prior to execution hereof by FirstWatch in writing. Client shall test the Software within thirty (30) days after it receives a copy of (or FirstWatch has enabled Client's access to) the Software.

7. *Acceptance.* The Software is Accepted upon the earlier of when (a) Client determines that the Software performs in accordance with the criteria set forth in the Acceptance Test Plan ("ATP"), set forth in Schedule C, or (b) the Software has been installed for thirty (30) days and Client has not advised FirstWatch that the Software fails to materially conform to the ATP. If the Software does not so perform for reasons inherent in the Software (and not, for example, third party hardware, software, other than the software used to connect to the data source or the software housing the data source, equipment, or system configuration), FirstWatch will promptly replace the Software with materially conforming Software. Client shall test the revised Software and, unless the parties agree otherwise, Client may either (1) Accept the Software as conforming, (2) Accept the Software AS IS, or (3) reject the Software. If Client rejects the Software it shall delete the Software from its computing system, shall certify in writing such deletion, and FirstWatch shall refund all Software license fees paid by Client.

Client shall have thirty (30) days after initial delivery to finally Accept or reject the Software. The foregoing is the sole remedy available in the event of nonconforming Software.

8. *Client Satisfaction.* FirstWatch desires that Client is fully satisfied with the Software. If, within ninety (90) days after installation, for any reason, Client is not satisfied with the Software, Client may elect to return the Software and receive a full refund of all Software license fees paid to FirstWatch.

9. *Fees and Payments.* Client shall pay all fees according to the terms of Schedule A, and to pay a late fee of one percent (1.0%) interest per month on all fees due and payable under the Agreement, which are more than 30 days overdue. Client shall pay for all travel-related expenses (e.g., ground transportation, accommodations, food) incurred by FirstWatch at the request of Client and approved in advance by Client in writing, for Software-related services such as on-site installation, training, customization, integration, support, and maintenance. Such additional services will be pursuant to a separate written agreement. Client is a municipality and is exempt from payment of all sales and/or use taxes arising out of its use of the Software. Client will provide a certificate of exemption upon request.

10. *Limited Warranties; Exclusions.*
FirstWatch warrants that for ninety (90) days after Acceptance, the Software will perform in substantial conformance with the ATP, provided that the Software has been used as specified by FirstWatch herein. FirstWatch will use its best efforts to correct any material nonconformance within ten (10) business days after receipt of written notice of such nonconformance and Client's provision of any data, output, or other documentation or description of the nonconformance. The limited software warranty applies only to Software used in accordance with the Agreement and does not apply if the Software media or Software code has been subject to accident, misuse, or modification by a party other than FirstWatch or as authorized by FirstWatch. FirstWatch does not warrant that the functions contained in the Software will meet Client's specific needs, industry requirements, be error-free, or operate without interruption.
THESE LIMITED WARRANTIES ARE IN LIEU OF, AND CLIENT HEREBY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. *Limitation of Liability.* Neither party shall be liable for indirect, incidental, consequential, special, punitive or exemplary damages, or for lost profits or business interruption losses, in connection with the Software or this Agreement, regardless of whether it has been made aware of their possibility. Other than amounts due to a party pursuant to Sections 9 or 13, or the breach of Sections 4, 5, or 14, in no event shall either party be liable to the other, under any theory of recovery, including contract, negligence, strict liability, warranty or products liability, in an amount in excess of the amount Client paid to FirstWatch for products and services. Any claims relating to this Agreement shall be brought within two (2) years after the occurrence of the event giving rise to the cause of action.

12. *Termination.* Either party may terminate this Agreement if there is a material breach by either party that is not cured within thirty (30) days after receipt of written notice of such breach. Upon termination of this Agreement by FirstWatch for a material breach by Client, Client shall promptly discontinue using the Software and return to FirstWatch, or certify in writing, the destruction of all Software, Documentation, and FirstWatch training materials. Upon termination by Client for a material breach by FirstWatch, FirstWatch shall provide a refund of all software license fees paid if Client discontinues using the Software and destroys or returns it as described above. Upon termination by Client for a material breach by FirstWatch related to Software Maintenance and Support, FirstWatch shall provide a prorate refund of all prepaid maintenance fees.

13. *Indemnification.*
FirstWatch will indemnify Client and will hold Client harmless from any and all claims, that the Software or any part thereof infringes upon the intellectual property rights of any third party. FirstWatch will promptly secure the necessary rights for the Client to continue the lawful use of the Software, or, if that is not possible, refund all license and maintenance fees paid by Client to FirstWatch, and FirstWatch will defend, at its expense, any action brought in a United States court of law against Client which alleges that the Software supplied by FirstWatch hereunder infringes any trademark or duly issued patent or copyright and shall pay all damages and costs finally awarded against Client which are directly attributable to such infringement. Client shall give FirstWatch prompt written notice of such claim, and promptly furnish a copy of all communications, notices and other acts relating to such claim. Client shall give FirstWatch reasonable assistance (at FirstWatch's expense) necessary to defend or settle such claim; *provided, however,* that Client shall have the right to participate in the defense of any resulting suit or proceeding at its expense and through counsel of its choosing. FirstWatch shall not be obligated to defend, or be liable for any costs and damages, if the infringement arises directly or indirectly out of or from Client's combination with or an addition to products not manufactured and developed by FirstWatch, or Client's modification of the Software after delivery by FirstWatch, other than per instructions given by FirstWatch in writing.

14. *Confidentiality.*
FirstWatch and Client may have access to information that the other considers to be confidential, private, or a trade secret. This information may include, but is not

limited to, patient or other data, the Software, technical know-how, technical specifications, software code, manners of conducting business and operations, strategic business plans, systems, results of testing, financial information, and third-party information ("Information").

Each party shall use the other's Information only to perform its obligations under, and for the purposes of, the Agreement. Neither party shall use the Information of the other for the benefit of a third party. Each party shall maintain the confidentiality of all Information in the same manner in which it protects its own information of like kind, but in no event shall either party take less than reasonable precautions to prevent the unauthorized disclosure or use of the Information.

Upon termination of the Agreement, or upon a party's request, each party shall return to the other all Information of the other in its possession. All provisions of the Agreement relating to confidentiality, ownership, and limitations of liability shall survive the termination of the Agreement.

15. *Ownership of Data.* The parties acknowledge and agree that all Client data ("Data"), is and shall remain the exclusive property of Client. FirstWatch acknowledges that in performing its obligations under the Agreement it may have access to Client networks and Data. FirstWatch will use and access such Data only as necessary for the purpose of providing the services and supporting the Software as agreed.

16. *HIPAA.* With respect to any protected health information ("PHI") and to the extent FirstWatch is subject to the provisions of the Health Insurance Portability and Accountability Act as a Business Associate, FirstWatch shall (a) not use or disclose PHI other than as permitted or required by any agreement between FirstWatch and Client, or as required by law, (b) use appropriate safeguards to prevent use or disclosure of the PHI, (c) report to Client any unauthorized use or disclosure of the PHI of which it becomes aware, (d) ensure that any agent or subcontractor that accesses PHI in order to assist FirstWatch in providing the Services will be bound by the provisions of this Section, (e) reasonably cooperate with Client to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI available to a governmental agency in the event a governmental agency requests such information, (f) document all its disclosures of PHI and information related to such disclosures, and notify Client of such disclosures, (g) return or destroy all PHI upon termination of the Services under this Agreement. If the parties enter into a separate agreement regarding the use of protected health information, the terms of that separate agreement shall take precedence and control over the terms of this Section 16.

17. *General.*

All required communications shall be in writing and addressed to the recipient party at its address set forth in this Agreement, addressed to the person who signed the Agreement on behalf of such party, or to such address and person as may be designated by such party in writing. All communications are deemed given when hand-delivered; or if mailed, by registered mail with verification of receipt, upon date of mailing; or if by electronic mail or facsimile, when received (with verification of transmission sent promptly to the receiving party along with a hard copy of the communication).

Any part of the Agreement held to be invalid or unenforceable, shall be revised so as to make it valid and enforceable, consistent with the intent of the parties expressed in that provision. All other provisions of the Agreement will remain in full force and effect. The remedies accorded FirstWatch are cumulative and in addition to those provided by law.

The Agreement, all Schedules (A-C), and any amendments thereto constitute the entire understanding of the parties with respect to the subject matter of the Agreement and replaces all prior and contemporaneous written and oral communications, promises, or understandings. Schedules A, B and C are attached hereto and incorporated herein for all purposes. The Agreement shall be governed by the laws of the State of Texas and may be amended only by a writing signed on behalf of both parties. If the amendment results in an increase in fees owed by Client, the amendment must be approved by the San Antonio City Council, by ordinance passed therefore. Electronic mail shall not be deemed to constitute a signed writing for purposes of this modification provision. No waiver of any right or remedy will be effective unless given in writing and signed on behalf of the party making such waiver. No purchase order or other administrative document will amend the Agreement unless signed by a representative of both parties and identified as an amendment to the Agreement, even if accepted by the receiving party without objection.

Neither party may assign any rights or delegate any duties under the Agreement without the prior, written consent of the other party, which will not be unreasonably withheld, and any attempt to do so without consent will be void. The Agreement is binding upon the parties' successors and permitted assigns.

AGREED AND ACCEPTED:

FirstWatch Solutions, Inc.

By: _____
      Signature

Name: _____
      Todd Stout, President

      Feb. 23, 2006

Client Name and Address:
      City of San Antonio, Texas_____

      _____
      _____
      _____
      _____

By: _____
      Signature

Name: _____
      Printed

Title: _____

Project Services, Pricing & Payment Schedule, Contact Information & Technical Specifications

Schedule A

FirstWatch shall provide the following Project Services:

- Single license of FirstWatch Thin-Client Software installed on Licensee's dedicated FirstWatch PC/Server

  - All data integration with San Antonio Fire Department's Zoll EMS Pro System and San Antonio Fire Department's Computer Aided Dispatch (CAD) integrated via:
    - Connectivity to a data source via ODBC;
    - or client provided web services interface allowing FirstWatch data center to securely access, query and receive necessary data via a non-dedicated internet connection. Client provided web services interface will include the ability to encrypt and decrypt data and options to query live and historical data.
    - or Text or XML *file* output for each incident from a Licensee-provided process (one or more files for each incident) that provides files on the dedicated FirstWatch PC/Server;

  - Data Shuttle, remote connectivity and other software and processes on Licensee's dedicated FirstWatch PC which work together to reliably and securely transmit data to the FirstWatch Data Center, and allow for remote support, using Licensee-provided, always-on Internet connectivity.

  - Linking of data sources requires, at a minimum, a unique key that exists within each data source in a useable format.

- Modify centrally located FirstWatch server-based processes, software and database as necessary to receive Licensee's data, import into FirstWatch database, and monitor for statistically-significant increases in volume or geographic clusters of calls which meet user-defined criteria.

- Provide Licensee-specific user login(s) and password(s) to allow up to six (6) simultaneous users on the FirstWatch subscriber Internet site, which doubles during an alert to twelve (12) simultaneous users. (Access by additional users may be purchased.)

- Provide the ability for the Licensee to define up to fifteen (15) distinct "trigger sets" for monitoring by FirstWatch. (Additional trigger sets may be purchased.)

- Provide a default "bio" trigger set with monitoring and alerts to demonstrate complete functionality of system.

Pricing and Payment Schedule:

San Antonio OEM (SAFD) FirstWatch Pricing			
FirstWatch® Thin Client Software License Fees	1	$34,120.00	$34,120.00
Annual Maintenance Fee (Year 1)	1	$6,142.00	$6,142.00
Installation of FirstWatch system	1	$1,500.00	$1,500.00
Integration of FirstWatch w/SAFD CAD	1	$4,000.00	$4,000.00
Add: 10 Triggers (10 additional Triggers @ 233.50 ea + 5 system included triggers = total of 15 triggers)	10	$233.50	$2,335.00
Add: Year 2, 10 Triggers	10	$233.50	$2,335.00
Add: Year 3, 10 Triggers	10	$233.50	$2,335.00
Add: Integration w/ZDS EMS Pro (2nd data source)	1	$11,500.00	$11,500.00
Add: Annual Maintenance for ZDS EMS Pro Interface	1	$ 2,070.00	$ 2,070.00
Add: 2 years Annual Maintenance (total of 3 years) for SAFD system	2	$6,142.00	$12,284.00
San Antonio OEM (SAFD) Total			**$78,621.00**

Payment Schedule

FirstWatch may invoice Client for 50% of the software license fee ($17,060.00) upon Client's execution of the license agreement.

FirstWatch may invoice Client for 100% of the fee for installation of the FirstWatch system ($1,500.00) upon installation of said system.

FirstWatch may invoice Client for 100% of the fee for integration of the FirstWatch system with Client's CAD system ($4,000.00) upon said integration.

FirstWatch may invoice Client for 100% of the fee for integration of the FirstWatch system with Client's ZDS EMS Pro system ($11,500.00) upon said integration.

FirstWatch may invoice Client for 50% of the software license fee ($17,060.00) upon Client's acceptance of the software in accordance with Section 7 of the software license agreement.

FirstWatch may invoice Client for 100% of the maintenance fee for Year 1 of maintenance ($ 6,142.00) at the beginning of the first year of maintenance, which will occur upon expiration of the warranty period in accordance with Section 4 of the software license agreement.

FirstWatch may invoice Client for 100% of the maintenance fee for Years 2 and 3 of maintenance ($12,284) at the beginning of the first year of maintenance, which will occur upon expiration of the warranty period in accordance with Section 4 of the software license agreement. Parties agree that Client has elected to prepay for said maintenance.

FirstWatch may invoice Client for 100% of the maintenance fee for Year 1 of maintenance for ZDS EMS Pro ($2,070.00) upon Client's acceptance of the integration.

FirstWatch may invoice Client for 100% of the annual fee for the 10 additional Triggers ($2,335.00) upon Client's acceptance of the system in accordance with Section 7 of the software license agreement.

Client agrees to pay all such conforming invoices within 30 days of receipt of same in accordance with the Texas Prompt Payment Act.

Contact Information:

| Licensor Contact

Tax I.D. No.

05-0544884	Todd Stout, President FirstWatch® 937 S. Coast Hwy 101, #C-201 Encinitas, California, 92024	Phone: 760-943-9123 Fax: 760-942-8329 Email: tstout@firstwatch.net
Licensee Contact	District Chief Alfredo (Al) Castro 115 Auditorium Circle San Antonio, Texas 78205	Phone : 210-207-8403 Fax: 207-7366 Email: alcastro@sanantonio.gov

Business Associate Agreement

This Business Associate Agreement ("Agreement") dated _____, 2006 (the "Effective Date"), is entered into by and between the City of San Antonio ("Health Care Provider") and FirstWatch Solutions, Inc., ("Business Associate").

WHEREAS, Health Care Provider and Business Associate have a license agreement ("Business Arrangement") pursuant to which Business Associate may provide services for Health Care Provider that require Business Associate to access health information that is protected by state and/or federal law;

WHEREAS, Business Associate and Health Care Provider desire that Business Associate obtain access to such information in accordance with the terms specified herein;

NOW THEREFORE, in consideration of the mutual promises set forth in this agreement and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1.   **Definitions.** Unless otherwise specified in this Business Associate Agreement, all capitalized terms not otherwise defined shall have the meanings established for purposes of Title 45, Parts 160, 162 and 164, of the United States Code of Federal Regulations, as amended from time to time. For purposes of clarification, the following terms shall have the definitions as set forth herein below:

"Privacy Standards" shall mean the Standards for Privacy of Individually Identifiable Health Information as codified in 45 CFR Parts 160 and 164.

"Security Standards" shall mean the Security Standards for the Protection of Electronic Protected Health Information as codified in 45 CFR Parts 160, 162 and 164.

"Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual, or with respect to which there is reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term in the Privacy Standards and in the Security Standards.

2.   **Business Associate Obligations.** Business Associate may receive from Health Care Provider health information that is protected under applicable state and/or federal law, including without limitation, Protected Health Information. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards or the Security Standards if the PHI were used or disclosed by Health Care Provider in the same manner. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement.

3.   **Use of PHI.** Business Associate may use PHI only (i) for the purpose of performing services for Health Care Provider as such services are defined in Business Arrangement, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Health Care Provider shall retain all rights in the PHI not granted herein.

4.   **Disclosure of PHI.** Business Associate may disclose PHI as necessary to perform its obligations under the Business Arrangement and as permitted by law, provided that Business Associate shall in such case: (a) obtain reasonable assurances from any person to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity; (b) agree to immediately notify Health Care Provider of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards or the Security Standards; and (c) obtain reasonable assurances that all disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the

intended purpose may be disclosed. In addition, Business Associate may disclose PHI as required by law. If Business Associate discloses PHI received from Health Care Provider, or created or received by Business Associate on behalf of Health Care Provider, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Health Care Provider any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within five (5) days of the Business Associate becoming aware of such use or disclosure. Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Health Care Provider in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI in violation of this Agreement.

5. **Individual Rights.** If Business Associate maintains a Designated Record Set on behalf of Health Care Provider, Business Associate shall (a) permit an individual to inspect or copy PHI contained in that set about the individual under conditions and limitations required under 45 CFR § 164.524, as it may be amended from time to time, and (b) amend PHI maintained by Business Associate as requested by Health Care Provider. Business Associate shall respond to any request from Health Care Provider for access by an individual within five (5) days of such request and shall make any amendment requested by Health Care Provider within ten (10) days of such request. The information shall be provided in the form or format requested, if it is readily producible in such form or format, or in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying PHI may be charged. Business Associate shall accommodate an individual's right to have access to PHI about the individual in a Designated Record Set in accordance with the Privacy Standards set forth at 45 CFR § 164.526, as it may be amended from time to time, unless the regulation provides for a denial or an exception expressly applies. Health Care Provider shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Health Care Provider within five (5) days of receipt of any request for access or amendment by an individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set.

6. **Accounting of Disclosures.** Business Associate shall make available to Health Care Provider in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFR § 164.528, as it may be amended from time to time, incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the Privacy Standards. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Health Care Provider's request. Such accounting must be provided without cost to the individual or to Health Care Provider if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Health Care Provider and the Health Care Provider informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting shall be provided as long as Business Associate maintains PHI.

7. **Withdrawal of Consent or Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific consent or authorization for the use of his or her PHI, and (i) the individual revokes such consent or authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.

8. **Records and Audit.** Business Associate shall make available to Health Care Provider and to the United States Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Health Care Provider for the purpose of determining Health Care Provider's compliance with the Privacy Standards and the Security Standards or any other health oversight agency, in a timely a manner designated by Health Care Provider or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Health Care Provider immediately upon receipt by Business Associate of any and all requests served upon Business Associate for information or documents by or on behalf of any and all government authorities.

9. **Notice of Privacy Practices.** Health Care Provider shall provide to Business Associate its Notice of Privacy Practices ("Notice") when adopted and any amendments thereafter. Business Associate agrees that it will abide by the limitations of any Notice published by Health Care Provider of which it has knowledge. An amended Notice shall not affect permitted uses and disclosures on which Business Associate has relied prior to the receipt of such Notice.

10. **Confidentiality.** Business Associate shall take any steps required to (i) protect PHI from unauthorized uses or disclosures and (ii) maintain the confidentiality and integrity of PHI. Prior to any permitted disclosure of PHI, Business Associate shall require the person or entity to which it intends to disclose PHI to assume all of the same duties with respect to PHI that Business Associate has under this Agreement.

11. **Security.** Business Associate will: implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Health Care Provider; ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect the information; and report any security incidents to the Health Care Provider within two (2) days of discovery of any such security incident of which it becomes aware.

12. **Term and Termination.**

12.1   This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this section 12, provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

12.2   Health Care Provider shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

12.3   Health Care Provider, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate hereunder if any of the following events shall have occurred and be continuing:

(a)   Business Associate shall fail to observe or perform any material covenant or Agreement contained in this Agreement for ten (10) days after written notice thereof has been given to Business Associate by Health Care Provider; or

(b)   A violation by Business Associate of any provision of the Privacy Standards, Security Standards, or other applicable federal or state privacy law.

12.4   Upon the termination of the Business Arrangement, either party may terminate this Agreement by providing written notice to the other party.

12.5   Upon termination of this Agreement for any reason, Business Associate agrees either to return to Health Care Provider or to destroy all PHI received from Health Care Provider or otherwise through the performance of services for Health Care Provider, that is in the possession or control of Business Associate or its agents. In the case of information for which it is not feasible to "return or destroy," Business Associate shall continue to comply with the covenants in this Agreement with respect to such PHI and shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment. Termination of this Agreement shall be cause for Health Care Provider to terminate the Business Arrangement.

13. **Miscellaneous.**

13.1 **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below.

HEALTH CARE PROVIDER:

City of San Antonio, Fire Department, EMS Division
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: District Chief Alfredo Castro

BUSINESS ASSOCIATE:

FirstWatch Solutions, Inc.
Todd Stout, President
937 S. Coast Hwy 101, #C-201 Encinitas, California, 92024

13.2 **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

13.3 **Assignment.** Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Health Care Provider shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Health Care Provider, without the prior approval of Business Associate.

13.4 **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Health Care Provider relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangement or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangement comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

13.5 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

13.6 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

14. **Indemnification**

14.1 *BUSINESS ASSOCIATE WILL INDEMNIFY HEALTH CARE PROVIDER FOR ANY CLAIM, DAMAGE OR LIABILITY ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BUSINESS ASSOCIATE OR SIMILAR BREACH BY RECIPIENTS ("CLAIM") IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE BUSINESS ARRANGEMENT.*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF SAN ANTONIO   FIRSTWATCH SOLUTIONS, INC.

By:_____   By: _____
Title:_____   Title: _Presidert_ (Todd Stout)

APPROVED AS TO FORM:

_____
Lauren O'Connor
Assistant City Attorney

Acceptance Test Plan
Schedule C

Introduction

The purpose of the Acceptance Test Plan is to provide the customer with a tool to guide them through the verification process resulting in system acceptance. This document will walk through the most commonly used functionality of the product and provide an expected result for each "test" executed.

These tests assume that the data made available to FirstWatch contains the information necessary to provide the functionality to test. (An example would be if the underlying data available to FirstWatch does NOT contain patient destination for an ambulance call, then FirstWatch can not make it available for the user to view or test in test items 30 and 31.)

Number	Test	Expected Result	Pass Y/N
1	Navigate to the FirstWatch Subscriber Site www.first-watch.us	FirstWatch Subscriber Site displays	
2	Enter the Username provided by FirstWatch, tab to the Password field and enter an incorrect password. Click the Login button.	"Incorrect username or password" dialog displays	
3	Click OK on the dialog box.	Screen returns to the Subscriber Site login page.	
4	Enter the Username and Password provided by FirstWatch then click the Login button.	The Control Panel view will display showing a default Bio trigger. The trigger information will be color-coded identifying trigger status.	
5	Verify that the web page now displays as a secure site.	The web address should begin with https and the lock icon will display in the status bar at the bottom of the page.	
6	Click on the name of the trigger (hyperlink).	The GraphIt Summary page will display showing the Biosurveillance (Count, STA, CUSUM) trigger.	
7	Verify the trigger alert status icon displays. (Located in the center of the upper section of the page.)	Trigger alert status icon will match the current system alert status.	